

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

JOHN DOE,

Plaintiff,

v.

KENYON COLLEGE,

Defendant.

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No. 2:20-cv-4972
Judge Michael H. Watson
Magistrate Judge Chelsey M. Vascura

ORDER

On January 15, 2021, Plaintiff John Doe served document requests on Defendant Kenyon College (“Kenyon”) which seek, among other things, documents that constitute “education records” and contain “personally identifiable information” of third party current and former Kenyon students, as defined by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and 34 C.F.R. § 99.3.

Although Kenyon has identified documents responsive to Plaintiff’s requests that it agrees are relevant to the litigation, Kenyon asserts that according to 34 C.F.R. § 99.31(a)(9)(i), it may only produce these records without redactions to remove third party personally identifiable information if: (1) it is ordered to do so; and (2) after providing each student whose education records are at issue with an opportunity to seek protective action from this Court. This Court agrees.

Accordingly, to the extent any document requests served on Kenyon seek records that Kenyon believes are subject to FERPA, and such records are otherwise discoverable in this case, then Kenyon must produce those documents once it issues a FERPA notice that gives the affected students a reasonable opportunity to object.

IT IS ORDERED as follows:

1. To the extent that any of the document requests made by John Doe to Kenyon seek discoverable information that includes education records or personally identifiable information of non-party current or former Kenyon students, Kenyon is ordered to produce such documents in accordance with 20 U.S.C. §1232g(b) and 34 C.F.R. § 99.31(a)(9)(i), provided that the notice protocol set forth below is followed.

2. Before producing any non-party education records, Kenyon shall make a reasonable effort in accordance with 34 C.F.R. § 99.31(a)(9)(ii) to notify the non-party students whose records have been requested. Students whose education records have been requested shall be given 14 days to object to the production of documents that include their education records.

3. Any students objecting to the production of documents shall set forth the basis for their objection in writing and submit it to:

Office of the Clerk
U.S. District Court for the Southern District of Ohio
Joseph P. Kinneary U.S. Courthouse
Room 121
85 Marconi Boulevard
Columbus, Ohio 43215

4. After the 14-day notice period expires, Kenyon shall promptly produce the documents about which no request for protective action has been made by a non-party student.

5. Any education records produced by Kenyon pursuant to this Order will be subject to the Stipulated Protective Order issued in this case. (*See* ECF No. 20.)

6. This Order in no way prejudices Kenyon from arguing that the requested documents or information fall outside the permissible scope of discovery or are otherwise subject to limitations set forth in the Federal and Local rules.

IT IS SO ORDERED.

/s/ Chelsey M. Vascura

CHELSEY M. VASCURA

UNITED STATES MAGISTRATE JUDGE